IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2762 OF 2004

TCE Consulting Engineers Limited)
(Erstwhile Tata Consulting)
Engineers, a Division of M/s.)
Tata Sons Limited) subsequently)
incorporated as a separate)
Company, namely, TCE Consulting)
Engineers Limited, having their)
office at Matulaya Center -"A",)
1st Floor, 249, Senapati Bapat)
Marg, Lower Parel,Mumbai-400 013)..PETITIONER

Versus

1. Tata Consulting Engineers &)
Associates Staff Union,)
C/o. G.S. Gawde, 21/3,Abdulla)
Building,Parel,Mumbai-400 012)
3. The Member,Industrial)
Tribunal, New Administrative)
Building, Bandra-Kurla)
Complex, Mumbai.)..RESPONDENTS

Mr. K.M. Naik i/b.S.P. Salkar, for the Petitioner
Mr. N.M. Ganguli, for Respondents.

CORAM: F.I. REBELLO J.
DATE : 25th October, 2004

ORAL JUDGMENT:

1. Rule. Heard forthwith. The petitioner is aggrieved by the judgment dated 8th August, 2004 passed in Complaint (ULP) No.396 of 1997 by the Industrial Court, Mumbai. By that order the learned Industrial Court was pleased to partly allow the complaint filed by the respondent herein. The learned Industrial Court was pleased to hold that the petitioners were guilty of engaging in unfair labour practice within the meaning of Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act, 1971, and were further directed to cease and desist from the same. The petitioners were also directed to revise the

basic wages of the employees mentioned in the order by first giving the appropriate fitment and then the increment in the revised scale as per the settlement dated 5th July, 1995 with effect from 1st January, 1994.

2. The petitioners had entered into a settlement with the Tata Consulting Engineers Employees Union dated 5th July, 1995. These benefits were agreed to be extended to such of the workmen who gave declaration in form set out in Exhibit "B" to the Settlement. Members of Respondent No.1 did not sign the declaration as set out in Exhibit "B" to the settlement. Consequent thereon they were not extended the benefits. The settlement provided for fitment. The relevant clause reads as under:-

"FITMENT:

1. Those workmen whose basic wage as of 1.1.1994 is in the correct step of the revised basic scale will be fitted at the same basic wage.

2. Those workmen whose basic wage as of 1.1.1994 is not in the step of the revised basic wage due to partial increment or otherwise, will be fitted at the next basic wage in the revised scale.

Those workmen who have not got any increment as of 1.1.94 because of the top of the grade policy, will be

fitted into the revised scale at the appropriate step

and will be given one increment."

3. A reference being Reference IT No.49 of 1986 was pending before the Industrial Court. The respondent No.1 therein made an application that the benefits of the settlement be granted in favour of the members of the respondent No.1. An interim award came to be passed on 19th September, 1996 directing the Company to extend the benefits of the 9th September, 1996 settlement to the member workmen of the respondent No.1 Union. The petitioners aggrieved by the said interim award challenged the same before this Court in Writ Petition NO.356 of 1997. A learned Judge of this Court considering the pendency of the reference and as the interim award was purely an interim arrangement was pleased to dismiss the petition. The petitioners being aggrieved preferred an appeal to the Appellate Bench of this Court in Appeal NO.552 of 1997. That Appeal came to be disposed of by order dated 9th July, 1997. The following paragraph of the order needs to be reproduced:-

"Mr.. Naik makes a statement that the company will implement the order of the Tribunal within four weeks from today. In view of the statement made by Mr. Naik, Mr. Deshmukh, the learned counsel for Respondent No.1 agrees to withdraw the proceedings initiated on account of non-implementation of the order of the Tribunal. The learned single Judge has

expedited the hearing of the Reference. Mr. Naik tenders a list of six witnesses, who would be examined on behalf of the company. The Tribunal shall complete the recording of evidence of those witnesses within three months from today and, there after, dispose of the Reference expeditiously within the time frame fixed by the single Judge."

Subsequent to the interim award of the Industrial Court the Respondent No.1 filed a complaint on 29th April, 1997. The grievance in the complaint was that the petitioners herein by not implementing the Award of the Industrial Tribunal had committed an act of unfair labour practice under Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act.

4. The petitioners pursuant to the disposal of the Appeal by this Court on 7th October, 1997 moved an application for dismissal of the complaint considering the order passed in Writ Petition No.552 of 1997. The respondent No.1 to that filed a reply on 25th February, 1999 setting out therein that the petitioner herein had filed a pursis that they had implemented faithfully and fully the Award Part II in Reference (IT) No.49 of 1986 and in that connection Respondent No.1 having taken inspection of pay sheets offered for inspection it was revealed that the employees whose names are mentioned in the list attached in the application had not been given proper benefits of the Award Part II. Under the circumstances sought a direction against the petitioners

herein to produce the documents as set out therein. By order of 30th January, 2001 the Union was allowed to take inspection of the records. An application was moved on 16th April, 2001 to place on record the inspection sheets. The company filed a reply to taking inspection record by Respondent No.1 and further prayed that the complaint filed by the respondent No.1 for non-implementation of the Award be rejected. Evidence was led in the matter. Affidavit by way of evidence of Nargis R. Patel was filed on behalf of the petitioner in which he averred that in the matter of implementation of the terms of the settlement dated 5th July, 1995 Tata Consulting Employees' Union which is a party to the settlement had not raised any grievance about implementation of the said settlement. There was no cross examination on this aspect of the matter. Then came the impugned judgment dated 12th August, 2004 which is the subject matter of the present petition.

5. At the hearing of this petition on behalf of the petitioner their learned Counsel contends that the learned Industrial Court acted without jurisdiction in holding that the petitioners are guilty of unfair labour practice. It is pointed out that the complaint was for seeking relief against the petitioners herein for non-implementation of the interim Award of the Industrial Court. That had been done by the Company. The grievance of the petitioners that fitment was not properly done under the settlement was not the subject matter of the complaint and considering that the order is liable to be set aside. It is secondly contended that the

matter is in respect of implementation of the settlement and application of the fitment formula. The petitioners had applied the fitment formula. The majority union had not even disputed the implementation of the fitment formula. Even if there is some dispute as to the application of fitment formula that could not be said to be an act of unfair labour practice. Reliance has been placed on the judgment in the case of Balmer Lawrie & Co. Ltd. v. S.M. Limaye and anr., 1992 Lab. I.C. 205. It is, therefore, contended that on this count also the order is liable to be set aside.

. On the other hand on behalf of the respondent No.1 Union their learned Counsel contends that implementing the Award does not mean implementing it in an incorrect manner. The Award has to be complied with in its real terms. In the instant case the fitment granted to members of the respondent No.1 after fixing the basic in the revised scale on 1st January, 1994 was clearly contrary to the settlement. Merely because the Union had signed the settlement and had not raised any dispute does not mean that the Respondents herein could not have so raised the dispute and consequently submitted that no interference is called in the exercise of the extra ordinary jurisdiction of this Court.

. It is also pointed out that ultimately what the Industrial court has done was to consider the terms of the settlement. In the instant case the Tribunal has taken a view as to how the fitment had to be done. It cannot be said that

was not a view possible and in these circumstances this Court ought not to interfere with the impugned order.

6. Having heard learned Counsel the question is whether this Court ought to exercise its extra ordinary jurisdiction. The complaint of unfair labour practice as filed by the respondent No.1 and as can be clearly seen from the averments in the plaint was on account of non-implementation of the award. The specific averments as to the act of unfair labour practice were that the petitioners in not implementing the award of the Industrial Tribunal have committed an act of unfair labour practice under Item 9 of Schedule IV of the M.R.T.U. & P.U.L.P. Act. This was based on the order passed by the Industrial Tribunal in its interim award dated 16th September, 1996. That interim order was to direct the company to extend the benefit of the settlement dated 5th July, 1995 entered into between the petitioners and Tata Consulting Employees Union to the workers covered by the order dated 1st October, 1994. The challenge to the said order was negatived by the learned Judge of this Court by order dated 25th March, 1997 and the complaint thereafter came to be filed on 29th April, 1997. An Appeal preferred by the petitioners was disposed off by order dated 9th July, 1997. It will thus be clear that the direction was to implement the settlement, as the complaint was on account of non-implementation of the settlement. The statement made to the Appellate Bench of this Court was that the petitioners will implement the order of the Tribunal within four weeks from that date.

. In that context can it be said that even though the settlement has been extended to those eligible, on account of a mistake in fitment, if we may state so, are the petitioners guilty of unfair labour practice. The grievance of the respondent No.1 is that though the settlement has been implemented in terms of the settlement. Petitioners before fixing the workmen into revised basic pay have included annual increment in the old scale and thereafter fitted the workmen in the revised scale. Therefore, strictly construing the complaint the issue of fitment whether correctly applied or not could not be said to be an act of unfair labour practice as the relief was to grant the benefits of the settlement to the members of the respondent No.1. That admittedly had been done. Once that be the case the trial Court on the basis of the complaint as filed atleast in a matter of unfair labour practice could not have gone beyond the complaint as filed. By so doing the trial Court has exceeded its jurisdiction and on that count itself the order is liable to be set aside.

9. Assuming that it was open to the learned Industrial Court to have gone into the issue the question was whether on the facts and circumstances the Industrial Court could have held that non-proper fitment would amount to an act of unfair labour practice. The learned Judge of this Court in Balmer Lawrie & Co. (supra) has observed that where a party bonafide puts forward his interpretation of the settlement between the management and the labour union, not as an excuse for avoiding

his obligation under the settlement and a serious controversy has developed between the parties on the interpretation, but the party is ready and willing to abide by an interpretation of a competent Court or authority, it cannot be said that such a party "failed" to implement the settlement within the meaning of the said expression appearing in Item 9 of Schedule IV. The learned Judge further observed that every case of non-implementation of a settlement, whatever may be the facts and circumstances and whatever may be reason, need not necessarily be characterised as an unfair labour practice. The expression "failure" cannot be equated to mere non-compliance irrespective of the facts of the case. In the instant case in terms of the statement made to this Court the petitioners have implemented the settlement. From the evidence led on behalf of the petitioners which was not disputed, it has been set out that the same fitment as followed in the case of members of the respondent NO.1 was also applied to others and the Union which signed the settlement has not raised any complaint on that count. It is possible to accept the contention of the Counsel for the respondent that merely because the other Union has not raised a dispute or agitated the same would not mean that the procedure adopted by the Company is in keeping with the terms of the settlement. It may be so. The question is whether in these circumstances it can be said that the petitioners are guilty of unfair labour practice. There is nothing to indicate that the petitioners have deliberately and/or with malafide intention have singled out the members of the

respondent No.1 in the matter of interpretation of the settlement. Even if there be a mistake in implementation it appears to be a bonafide mistake at the highest and, therefore, it cannot be said that the same amounts to an act of unfair labour practice. Once that be the case in my opinion this would not be a fit case for the Industrial Court to have come to the conclusion that the petitioners are guilty of an act of unfair labour practice.

10. Having said so, in my opinion, the petition will have to be allowed. Rule made absolute in terms of prayer clause (a). It may be made clear that if the respondents have any remedy otherwise the dismissal of their complaint would not stand in their way of taking recourse to such other remedy in law which they may be entitled to.

(F.I.REBELLO, J)